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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
TRUONG, LINH T	
ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 12/12/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/544,399	JOHNSON, ROYCE	
	Examiner	Art Unit	
	Linh Truong	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-12 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the **range of 50 to 250 words**. It is important that the **abstract not exceed 250 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim1 is rejected under 35 U.S.C. 102(b) as being unpatentable by Bertwell et al. '5,358,503.

4. For claim 1, Bertwell et al. teaches a pad (figure 4) that comprises means for providing phototherapy (column 2, line 68 and coloumn 3, lines 1-7).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1,4,9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertwell et al. in view of Hunt et al. '6,142,982.

7. For claim 1, Bertwell et al. teaches a pad for use in wound healing that provides photherapy (figure 4, column 2, line 68 and column 3, lines 1-7). Hunt et al. teaches a pad suitable for use in vacuum assisted wound closure therapy (column 6, lines 45-67). Therefore, it is obvious to one ordinary in the skill of the art at the time the invention was made to provide the invention of Bertwell et al. with a pad adapted for vacuum assisted wound closure therapy for more effective wound healing.

8. For claim 4, Bertwell et al. fails to disclose a pad which comprises of a highly reticulated, open-cell foam selected from the group consisting of polyurethane and polyether. Hunt et al., however, teaches this (column 5, lines 49-51). Therefore, it is obvious to one ordinary in the skill of the art at the time the invention was made to provide the invention of Bertwell et al. with a pad made out of a highly reticulated, open-cell foam selected from the group consisting of polyurethane and polyether for more efficient wound healing.

9. For claim 9, Bertwell et al. does not teach a device enabling the concurrent application of negative pressure therapy and the delivery of electromagnetic energy to a wound. Hunt et al., however, discloses a device that delivers negative pressure therapy that comprises a pad with vacuum drainage means and an air tight drape providing a seal about the pad (column 8, line 23). Therefore, it is obvious to one ordinary in the skill of the art at the time the invention was made to provide the invention of Bertwell et al. with the negative pressure therapy that includes a pad with vacuum drainage means and an air tight seal about the pad for more effective wound healing.

10. For claim 11, Bertwell et al. teaches a method of phototherapy but does not disclose a method of phototherapy concurrent with vacuum assisted closure therapy including negative pressure. Hunt et al., however, teaches a method with vacuum assisted closure therapy including negative pressure (column 1, lines 19-26). Therefore, it is obvious to one ordinary in the skill of the art at the time the invention was made to provide the invention of Bertwell et al. with a method of vacuum assisted closure therapy including negative pressure for more efficient wound healing.

11. Claims 2,5,6,7,8,10,and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertwell et al. in view of Thiberg '5,766,233.

12. For claim 2, Bertwell et al. does not disclose that the pad transmits electromagnetic radiation between 300nm and 1500nm. Thiberg, however, teaches a wound healing device that emits light wavelengths of 660nm and 950nm (column 2, lines 32-37), which is between 350nm and 1500nm. Therefore, it is obvious to one ordinary in the skill of the art at the time the invention was made to provide the invention

of Bertwell et al. with the appropriate range of electromagnetic wavelengths for efficient wound healing.

13. Claims 5,6,7,8,10, and 12 are the means of the phototherapy. These claims claim a combination of an optical fiber (claim 5) consisting of a plurality of optically transmitting fibers (claim 6), an optical pigtail (claim7) comprising a plurality of optical fibers (claim 8), and optical slots (claims 10 and 12) that provide the phototherapy. Bertwell et al. teaches diodes with an electric source as being the means for phototherapy. Thiberg, however, discloses for his wound healing device "...a light emitting element includes light emitting diodes or like devices which are constructed to emit infrared light." (column 2, lines 5-6). Therefore, it is obvious to one ordinary in the skill of the art at the time the invention was made to provide the invention of Bertwell et al. with an optical fiber, an optical pigtail, and optical slots for the means of emitting light for phototherapy.

Allowable Subject Matter

14. Claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is (703) 605-4974. The examiner can be normally reached on Monday through Friday from 8:00 AM-4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached at 703-308-2702. The fax phone number for this group is 703-306-4520.

Linh Truong
L.T.
12/04/01